

## 21 C.J.S. Courts § 256

Corpus Juris Secundum | May 2023 Update

### Courts

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### VIII. Concurrent and Conflicting Jurisdiction

#### A. Courts of Same State

##### 1. In General

§ 256. Jurisdiction over property; in rem proceedings

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, Courts  475(2) to 475(12), 478

**In an in rem proceeding in which the court must have control of property that is the subject matter of the suit in order to grant the relief sought, the court first acquiring control of the property is entitled to maintain and exercise its jurisdiction to the exclusion of other coordinate courts.**

In an in rem proceeding in which the court must have control of property that is the subject matter of the suit in order to grant the relief sought,<sup>1</sup> the court first acquiring control of the property is entitled to maintain and exercise its jurisdiction to the exclusion of other coordinate courts.<sup>2</sup> Accordingly, one court should ordinarily not interfere with property or funds of which another court has custody or control through the latter's officer<sup>3</sup> or representative,<sup>4</sup> such as an executor or administrator,<sup>5</sup> a sheriff,<sup>6</sup> or a receiver.<sup>7</sup>

There is authority holding, however, that a court is not deprived of jurisdiction over controversies concerning property in the custody of another court insofar as it can exercise such jurisdiction without disturbing the possession of such other court.<sup>8</sup> A court does not disturb another court's possession where the property is not, in fact, in *custodia legis*.<sup>9</sup>

### ***Criminal cases.***

The doctrine of noninterference to prevent conflict of jurisdiction over property or money has been held to apply to criminal cases and the procedure thereunder.<sup>10</sup> Thus, there is authority holding that an order to return seized items issued by one court after jurisdiction over the case has vested in another court is void and unauthorized.<sup>11</sup>

On the other hand, it has also been held that a court in which a criminal proceeding is heard has equitable jurisdiction to hear a motion for return of property under a statute providing for the return of property determined to have been unlawfully seized after there has been a default judgment in a civil forfeiture proceeding concerning the same property.<sup>12</sup> The reasoning is that in the unique situation of forfeitures, when the same district attorney's office is proceeding on both the criminal case and the forfeiture proceeding, the court can exercise its jurisdiction by exercising its inherent authority over those who are the officers of the court.<sup>13</sup>

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### **Footnotes**

1 Md.—[Voge v. Olin](#), 69 Md. App. 508, 518 A.2d 474 (1986).

2 Md.—[Voge v. Olin](#), 69 Md. App. 508, 518 A.2d 474 (1986).

Tex.—[Harris v. Moore](#), 740 S.W.2d 14 (Tex. App. El Paso 1987).

3 U.S.—[Isaacs v. Hobbs Tie & Timber Co.](#), 282 U.S. 734, 51 S. Ct. 270, 75 L. Ed. 645 (1931); [Park v. Stryker](#), 6 F.2d 457 (C.C.A. 8th Cir. 1925).

4 Ind.—[State ex rel. Tuell v. Shelby Circuit Court of Shelby County](#), 216 Ind. 231, 23 N.E.2d 425, 134 A.L.R. 1238 (1939).

5 Ind.—[State ex rel. Tuell v. Shelby Circuit Court of Shelby County](#), 216 Ind. 231, 23 N.E.2d 425, 134 A.L.R. 1238 (1939).

La.—[Succession of Williams](#), 153 La. 206, 95 So. 607 (1923).

6 Fla.—[Young v. Stoutamire](#), 131 Fla. 535, 179 So. 797 (1938).

Okla.—[State v. Gassaway](#), 1930 OK 113, 142 Okla. 140, 285 P. 978 (1930).

7                   Ill.—[Little v. Chicago Nat. Life Ins. Co.](#), 289 Ill. App. 433, 7 N.E.2d 326 (4th Dist. 1937).

                  Wash.—[Ginsberg v. Katz](#), 27 Wash. App. 593, 619 P.2d 995 (Div. 2 1980).

                  Wis.—[Alexander v. Wald](#), 231 Wis. 550, 286 N.W. 6 (1939).

8                   S.C.—[Ex parte International Harvester Co. of America](#), 137 S.C. 124, 134 S.E. 530 (1926).

9                   Iowa—[First Nat. Bank v. Murtha](#), 212 Iowa 415, 236 N.W. 433 (1931).

                  Mont.—[Griffiths v. Thrasher](#), 95 Mont. 238, 26 P.2d 983 (1933).

                  Tenn.—[Fidelity Phenix Fire Ins. Co. v. Ford & Cantrell](#), 164 Tenn. 107, 46 S.W.2d 64 (1932).

10                  Md.—[Outerbridge Horsey Co. v. Martin](#), 142 Md. 52, 120 A. 235 (1923).

11                  Ind.—[State ex rel. Coleman v. Hendricks Superior Court II](#), 272 Ind. 40, 396 N.E.2d 111 (1979).

12                  § 259.

13                  § 259.

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